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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,054	02/15/2002	Jean L. Lalanne	146.1374	7993
20311	7590	12/04/2003	EXAMINER	
MUSERLIAN AND LUCAS AND MERCANTI, LLP			DUFFY, PATRICIA ANN	
475 PARK AVENUE SOUTH			ART UNIT	
NEW YORK, NY 10016			PAPER NUMBER	
			1645	

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/980,054

Applicant(s)

LALANNE ET AL.

Examiner

Patricia A. Duffy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21, 24, 25, and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18, 21, 24, 25, and 27-29 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The preliminary amendment filed Nov 28, 2001 has been entered into the record. Claims 1-18, 21, 24, 25, and 27-29 are pending. claims 19, 20, 22, 23 and 26 having been canceled. It is noted that claim 12 as amended in the clean copy has inadvertently left out "a process for the preparation of recombinant proteins" as set forth in the marked up copy. Inasmuch as, this appears to be an oversight and as it is the only reasonable interpretation of claim 12 in view of pending claims 15 and 16, Claim 12 has been interpreted as a process of producing the recombinant proteins using the host cells for the lack of unity set forth below. Correction is required in response to this action.

### *Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 1-10, 12-16, 27, 29 (in part), drawn to polynucleotide encoding an polypeptide having at least 50% identity with a sequence that is homologous to the polypeptide of SEQ ID NO:2, 15-mer fragments and complements thereof, vectors, host cells, undefined methods and plasmids the first appearing technical feature.

Group 2, claim(s) 1-10, 12-16, 27, 29 (in part), drawn to polynucleotide encoding an polypeptide having at least 50% identity with a sequence that is homologous to the

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polypeptide of SEQ ID NO:4, 15-mer fragments and complements thereof, the second appearing technical feature.

Group 3, claim(s) 1-10, 12-16, 27, 29 (in part), drawn to polynucleotide encoding an polypeptide having at least 50% identity with a sequence that is homologous to the polypeptide of SEQ ID NO:6 or 8, 15-mer fragments and complements thereof, the third appearing technical feature.

Group 4, claim(s) 1-10, 12-16, 27, 29 (in part), drawn to polynucleotide encoding an polypeptide having at least 50% identity with a sequence that is homologous to the polypeptide of SEQ ID NO:10, 15-mer fragments and complements thereof, the fourth appearing technical feature.

Group 5, claim(s) 1-10, 12-16, 27, 29 (in part), drawn to polynucleotide encoding an polypeptide having at least 50% identity with a sequence that is homologous to the polypeptide of SEQ ID NO:12, 15-mer fragments and complements thereof, the fifth appearing technical feature.

Group 6, claim(s) 1-10, 12-16, 27, 29 (in part), drawn to polynucleotide encoding an polypeptide having at least 50% identity with a sequence that is homologous to the polypeptide of SEQ ID NO:14, 15-mer fragments and complements thereof, the sixth appearing technical feature.

Group 7, claim(s) 11, 18, 27, 28 (in part), drawn to polypeptide having SEQ ID NO:2, and analogs thereof, the 7th appearing technical feature.

Group 8, claim(s) 11, 18, 27, 28 (in part), drawn to drawn to polypeptide having SEQ ID NO:4, and analogs thereof, the 8th appearing technical feature.

Group 9, claim(s) 11, 18, 27, 28 (in part), drawn to drawn to polypeptide having SEQ ID NO:6 or 8, and analogs thereof, the 9th appearing technical feature.

Group 10, claim(s) 11, 18, 27, 28 (in part), drawn to drawn to polypeptide having SEQ ID NO:10, and analogs thereof, the 10th appearing technical feature.

Group 11, claim(s) 11, 18, 27, 28 (in part), drawn to drawn to polypeptide having SEQ ID NO:12, and analogs thereof, the 11th appearing technical feature.

Group 12, claim(s) 11, 18, 27, 28 (in part), drawn to drawn to polypeptide having SEQ ID NO:14, and analogs thereof, the 12th appearing technical feature.

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Group 13, claim(s) 11, 18, 27, 28 (in part), drawn to an inhibitor of a protein of a canceled claim 20, the 13th appearing technical feature.

Group 14, claim(s) 24, 25, 27 (in part), drawn to an antibody against the polypeptide having SEQ ID NO:2 or a fragments thereof, the 14th appearing technical feature.

Group 15, claim(s) 24, 25, 27 (in part), drawn to an antibody against the polypeptide having SEQ ID NO:4 or a fragments thereof, the 15th appearing technical feature.

Group 16, claim(s) 24, 25, 27 (in part), drawn to an antibody against the polypeptide having SEQ ID NO:6 or 8 or a fragments thereof, the 16th appearing technical feature.

Group 17, claim(s) 24, 25, 27 (in part), drawn to an antibody against the polypeptide having SEQ ID NO:10 or a fragments thereof, the 17th appearing technical feature.

Group 18, claim(s) 24, 25, 27 (in part), drawn to an antibody against the polypeptide having SEQ ID NO:12 or a fragments thereof, the 18th appearing technical feature.

Group 19, claim(s) 24, 25, 27 (in part), drawn to an antibody against the polypeptide having SEQ ID NO:14 or a fragments thereof, the 19th appearing technical feature.

The inventions listed as Groups 1-19 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: there is no common concept or structure linking the groups of inventions as set forth above. There is no technical relationship between the groups and subject relating to one or more identical or corresponding technical elements with in the meaning of PCT Rule 13.2. The specification discloses that the claimed sequences hare essential in nature for the survival and the growth of *Candida albicans* in order to substantiate a common inventive concept. This characteristic can not serve as a particular technical element which determines a contribution each of the groups of claimed inventions makes over the state of the art as the sequence is of a single essential gene in *Candida albicans* is described by Alfonso Mendoza et al (*Gene*, 229(1-2):p183-191, 1999) has solved this problem. The separate genes/polypeptides/antibodies/inhibitors as recited above therefore define separate technical features that are not "special" within the meaning of PVT Rule 13.2. The alleged concept of essential genes in *Candida albicans* is not novel and does not define a contribution over the art. Furthermore, it is noted that GenBank accession number AC006875 as recited in the international preliminary examination report (IPER-409) destroys the novelty of claims 1-3 in that it recites a 20-mer that is 100% identical as

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compared to SEQ ID NO:1 and as such, the claim does not define a technical feature that is novel over the art and the individual sequences as set forth are not related by structure or function and as such define independent technical features.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A. Duffy whose telephone number is 703-305-7555. The examiner can normally be reached on M-F 10:30pm-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Smith Lynette can be reached on 703-308-3909. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

*Pat. A. Duffy*  
Patricia A. Duffy

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Primary Examiner

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